

JAMES MCGILLIC AND BLOSSOM MCGILLIC

JANUARY 29, 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 451]

The Committee on the Judiciary, to which was referred the bill (S. 451) for the relief of James McGillic and Blossom McGillic, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to permit James and Blossom McGillic to institute suit against the United States for damages to their land and buildings, and their crops, allegedly resulting from the construction and maintenance of a dike by the Soil Conservation Service of the Department of Agriculture around such Service's nursery.

HISTORY OF THE LEGISLATION

A bill, the provisions of which were identical to S. 451, passed the Senate unanimously on December 15, 1950.

STATEMENT

The United States Government acquired land by lease near Mandan, N. Dak., for nursery purposes for the 2 years just prior to 1940. In order to protect this land, a dike system was commenced during the winter of 1938, and the dikes were progressively raised during the course of construction until they were brought to their present height in 1941. This land, and the private land which is the subject of this claim, are subject to flooding and have suffered from high water periodically. Most of the major floods in the vicinity have

been caused by back water due to ice jams in the Heart and Missouri Rivers. The claimants contend that the building of the dike by the Soil Conservation Department near the nursery caused floodwaters to pour over their land and to block the natural drainage of such land after a flood. It is their contention that since 1943 they have suffered \$27,151 in damages to their land as a result of the construction and maintenance of the dike.

The Department of Agriculture states that while its representatives have from time to time since 1943 studied the possible physical effect of the Government's dikes on the flooding and drainage of the claimants' land, no attempts have been made to ascertain either the monetary value of the damage sustained by them or the portion of such damage, if any, caused by acts of the Government.

Both the Department of Justice and the Department of Agriculture in their reports to this committee point out the fact that, inasmuch as the damages sustained since 1945 appear to be cognizable under the Federal Tort Claims Act, the Congress has specifically prohibited the consideration of a private bill in this instance. It is the suggestion of these Departments that the portion of the claim not cognizable under the Federal Tort Claims Act be made so, so that the entire claim may be considered in one action.

The committee feel justified in permitting suit to be instituted under the provisions of this bill even though a portion of the claim is presently barred by the statute of limitations since it appears from the record that lack of legal action may have resulted from the belief that the difficulty was being alleviated administratively. Accordingly, the committee is of the opinion that the entire claim should be prosecuted under the Federal Tort Claims Act. The only itemized statement of damages which the committee has before it dates from 1945 through 1950. Because of this and because that portion of the claim since 1945 cannot be considered by the Congress, it is the opinion of the committee that the entire claim should be sent to the Federal district court under the Federal Tort Claims Act for determination.

Attached to and made a part of this report are the reports of the Department of Justice and the Department of Agriculture, submitted in connection with legislation dealing with the same subject matter in the Eighty-first Congress.

DEPARTMENT OF JUSTICE,
Washington, D. C., September 7, 1950.

Hon. PAT McCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 3725) for the relief of James McGillic and Blossom McGillic.

The bill would provide for payment of the sum of \$13,575.50 to James McGillic, of Fargo, N. Dak., and a like amount to Blossom McGillic, of Mandan, N. Dak., in full satisfaction of their claims against the United States for compensation for permanent damages to their land and buildings, and damages to their crops beginning in 1943, caused by the construction and maintenance of a dike by the Soil Conservation Service of the Department of Agriculture around such Service's nursery which adjoins the land of the claimants' in Morton County, N. Dak.

In compliance with your request, a report was obtained from the Department of Agriculture concerning this legislation. According to that report, which is enclosed, it appears that the land in question lies in the Heart River flats just southeast of the town of Mandan, N. Dak. The area is subject to flooding and has suffered from high water periodically. Most of the major floods in the vi-

cinity of the nursery have been caused by back water due to ice jams in the Heart and Missouri Rivers. The land which the Government acquired was leased by the Government for nursery purposes for the 2 years just prior to 1940. Construction of a dike system to protect this land was commenced during the winter of 1938 and the dikes were progressively raised during the course of construction until they were brought to their present height in 1941.

The Department of Agriculture states that while its representatives from time to time since 1943 have studied the possible physical effect of the Government's dikes on the flooding and drainage of claimants' land, no attempts have been made to ascertain either the monetary value sustained by them from the high waters since 1943 or the portion of such damages, if any, caused by acts of the Government. The report directs attention to the Federal Tort Claims Act and states that since claimants already appear to have a right under that act to sue for part of the alleged damages, it is believed that all of the issues should be triable under the statute. That Department also states that it believes that the bill should not be enacted in its present form, but that it would have no objection to the passage of the bill to permit suit on all of the claims of the McGillics against the United States during the period for which there is no statutory provision conferring jurisdiction on the district courts to entertain such claims.

The Department of Agriculture observes that if an opinion on the extent of the damages is desired, that agency will undertake to assemble the necessary information and advise the committee at a later date, but that a minimum of 3 months would be required for such determination.

While the Department of Justice does not favor the enactment of bills which provide for payment of unliquidated damages, particularly in cases where the liability of the United States for the damages is questionable, it agrees with the Department of Agriculture that amendment of the bill to remove the bar of the statute of limitation and permit suits upon the claims under existing law, would be a more satisfactory method of handling these claims. To accomplish this change the following amendment of the bill is suggested:

Strike all the language of the bill after the enacting clause and substitute the following:

"That notwithstanding any statute of limitation or lapse of time, suits may be instituted within one year after the date of enactment of this Act by James McGillic of Fargo, North Dakota, and Blossom McGillic, of Mandan, North Dakota, upon their claims against the United States for damages to their land and buildings, and to their crops, purporting to have resulted from the construction and maintenance of a dike by the Soil Conservation Service of the Department of Agriculture around such Service's nursery, which adjoins the land of the said James McGillic and Blossom McGillic in Morton County, North Dakota. In any such suit brought pursuant to this Act, proceedings shall be had and the liability, if any, of the United States shall be determined in accordance with the provisions of law applicable in the case of tort claims against the United States: *Provided, however,* That nothing in this Act does or shall constitute an admission of liability on the part of the United States."

The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.

DEPARTMENT OF AGRICULTURE,
Washington, D. C., July 28, 1950.

HON. PEYTON FORD,
Deputy Attorney General, Department of Justice,
Washington 25, D. C.

DEAR MR. FORD: This is in reply to your request of June 22 for the comments of this Department on S. 3725, a bill for the relief of James McGillic and Blossom McGillic. The bill authorizes payment to the McGillics of \$13,575.50 each in full satisfaction of their claims against the United States for compensation for permanent damages to their land and buildings, and damages to their crops beginning in 1943 allegedly caused by the construction and maintenance of a dike by the Soil Conservation Service of this Department around the Service's nursery which adjoins the land of the said McGillics in Morton County, N. Dak.

Both the Government and the private land in question lies in the Heart River flats just southeast of the town of Mandan, N. Dak. This area is subject to

flooding and has suffered from high water periodically. Most of the major floods in the vicinity of the nursery have been caused by back water due to ice jams in the Heart and Missouri Rivers.

The land which the Government acquired was leased by the Government for nursery purposes for the 2 years just prior to 1940. Construction of a dike system to protect this land was commenced during the winter of 1938, and the dikes were progressively raised during the course of construction until they were brought to their present height in 1941. That part of the dike around the southwest corner of the nursery was relocated in 1949, although its height was not changed.

While field representatives of this Department have studied from time to time since 1943 the possible physical effect of the Government's dikes on the flooding and drainage of the McGillic land, no attempts have been made to ascertain either the monetary value of the damages sustained by the McGillics from the high water since 1943 or the portion of such damages, if any, caused by acts of the Government.

We wish to call attention to the Federal Tort Claims Act (62 Stat. 984, as codified in 28 U. S. C. 2401, 2671-2680), passed August 2, 1946, which confers jurisdiction on the United States district courts to hear, determine, and render judgment on any claim against the United States for money damages accruing on and after January 1, 1945, on account of damage to or loss of property caused by negligent or other acts of the Government. Therefore, since the McGillics already appear to have the right to press a suit for part of the alleged damages, we believe that all of the issues should be triable under the statute. Further, it will be noted that section 131 of the Legislative Reorganization Act, approved August 2, 1946 (60 Stat. 832), states that no private bill for the payment of money for property damages for which suit may be instituted under the Federal Tort Claims Act shall be received or considered in Congress. Consequently, we believe that the bill should not be enacted in its present form. We would have no objection, however, to the passage of a bill to permit the suit to cover all claims of the McGillics against the United States during the period for which there is no statutory provision conferring jurisdiction on the district courts to entertain such claims.

If the committee desires the opinion of this Department on the extent of the damages, if any, sustained by the McGillics through acts of the Government, we will undertake to assemble the necessary information and advise the committee at a later date. It is expected that a minimum of 3 months would be required for such a determination from the time we were requested to proceed with the study. Will you kindly see that this Department is informed as to disposition of the bill, and also as to whether further action on our part is necessary at this time.

Sincerely yours,

CHARLES F. BRANNAN, *Secretary.*

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